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MITIGATED NEGATIVE DECLARATION

July 21, 2008

Project Name: KRS Development Vesting Major Subdivision (1 Commercial & 17 Residential Lots)

Project Number(s): TM 5511 RPL³, S07-019; ER 06-05-003

This Document is Considered Draft Until it is Adopted by the Appropriate County of San Diego Decision-Making Body.

This Mitigated Negative Declaration is comprised of this form along with the Environmental Initial Study that includes the following:

- a. Initial Study Form
- b. Environmental Analysis Form and attached extended studies for

Biology, Archaeological, Traffic, Stormwater, Flooding/Drainage, and Noise

I. California Environmental Quality Act Mitigated Negative Declaration Findings:

Find, that this Mitigated Negative Declaration reflects the decision-making body's independent judgment and analysis, and; that the decision-making body has reviewed and considered the information contained in this Mitigated Negative Declaration and the comments received during the public review period; and that revisions in the project plans or proposals made by or agreed to by the project applicant would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and, on the basis of the whole record before the decision-making body (including this Mitigated Negative Declaration) that there is no substantial evidence that the project as revised will have a significant effect on the environment.

II. Required Mitigation Measures:

Refer to the attached Environmental Initial Study for the rationale for requiring the following measures:

A. TRANSPORTATION

1. The payment of the Transportation Impact Fee, which will be required at issuance of building permits, in combination with other components of this program, will mitigate potential cumulative traffic impacts to less than significant.
2. Prior to recordation of the Final Map for the first unit, improve or agree to improve and provide security for Hoberg Road along the frontage of the land division in accordance with Public Road Standards for a residential collector road, to a one-half graded width of thirty feet (30') and an improved width of twenty feet (20') from centerline of asphalt concrete pavement over approved base, with taper transition northerly to existing pavement, and additional widening at the intersection with Palm Canyon Drive, in accordance with the Community Right-of-Way Development Standards County Town Area of the Borrego Springs Planning Area and to the satisfaction of the Department of Public Works.
3. Prior to recordation of the Final Map for Unit #3, improve or agree to improve and provide security for Palm Canyon Drive along the frontage of the land division in accordance with Public Road Standards for a commercial collector road, to a one-half graded width of forty-four feet (44') and an improved width of thirty-four feet (34') from centerline of asphalt concrete pavement over approved base, in accordance with the Community Right-of-Way Development Standards County Town Area of the Borrego Springs Planning Area and to the satisfaction of the Department of Public Works. This applies to Palm Canyon Drive along the land division, with taper transition westerly to existing pavement and additional widening at the intersection with Hoberg Road.
4. Prior to recordation of the Final Map for Unit #1, improve or agree to improve and provide security for the private easement roads serving Lots 1 through 5, 16, 17, and 18 (Whip Drive and Street "A"), to a graded width of twenty-eight feet (28') and to an improved width of twenty-four feet (24') with asphalt concrete pavement over approved base, per the improvement and design standards of Section 3.1(C) of the County Standards for Private Roads for one hundred (100) or less trips.

5. Prior to recordation of the Final Map for Unit #2, improve or agree to improve and provide security for the private easement roads serving Lots 6 through 10 and 12 through 15 (Lazy Ladder Drive and Street "B"), to a graded width of twenty-eight feet (28') and to an improved width of twenty-four feet (24') with asphalt concrete pavement over approved base, per improvement and design standards of Section 3.1(C) of the County Standards for Private Roads for one-hundred one (101) to seven hundred fifty (750) trips.

B. BIOLOGICAL

1. Specific Biological Conditions [DPLU]
 - a. Prior to approval of grading and/or improvement plans, and prior to approval of the Final Map, the applicant shall, grant to the County of San Diego by separate document, an open space easement, as shown on TM 5511 RPL3 dated January 16, 2008 on file with the Department of Planning and Land Use as Environmental Review Number 06-05-003. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation. **DPLU**,

The sole exceptions to this prohibition are:

- (1) Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.

- (2) Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
 - (3) Uses, activities, and placement of structures expressly permitted by the Director of Planning and Land Use, whose permission may be given only after following the procedures and complying with all requirements applicable to an Administrative Permit pursuant to The Zoning Ordinance of the County of San Diego.
 - (4) Activities required to be conducted pursuant to a landscaping plan approved by the Director of Planning and Land Use.
 - (5) Passive recreation limited to non-motorized uses on the 15 foot wide trail easement across lot 11.
- b. Prior to approval of grading and/or improvement plans, and prior to approval of the Final Map, Grant by separate document to the County of San Diego a 30 foot Limited Building Zone Easement as shown on TM 5511 RPL3 dated January 16, 2008 on file with the Department of Planning and Land Use as Environmental Review Number 06-05-003. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement and prohibits the construction or placement of any structure designed or intended for occupancy by humans or animals. The only exceptions to this prohibition are:
- (1) Decking, fences, and similar facilities.
 - (2) Sheds, gazebos, and detached garages, less than 250 square feet in total floor area, that are designed, constructed and placed so that they do not require clearing or fuel modification within the biological open space easement, beyond the clearing/fuel modification required for the primary structures on the property.
- c. Prior to the approval of any plans, issuance of any permit, and approval of any final map(s), provide evidence to the satisfaction of the Director of Planning and Land that 46.46 acres of Sonoran Creosote Bush Scrub habitat credit has been secured in a mitigation bank approved by the California Department of Fish &

Game, located in the Borrego Valley ecoregion. Evidence of purchase shall include the following information to be provided by the mitigation bank:

- (1) A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
- (2) If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
- (3) To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
- (4) An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

-OR-

Provide for the conservation and habitat management of a minimum of 46.46 acres of Sonoran Creosote Bush Scrub habitat located in the Borrego Valley ecoregion. A Resource Management Plan (RMP) for the Sonoran Creosote Bush Scrub habitat must be submitted and approved by the Director of the Department of Planning and Land Use. The plan shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Requirement Guidelines. An open space easement over the acquired habitat must be dedicated to the County of San Diego prior to or immediately following the approval of the RMP. Alternatively, proof that a federal, state or local government agency with the primary mission of resource management has taken fee title to the land will be accepted in lieu of an easement.

C. CULTURAL

1. The Project Archaeologist shall monitor all areas identified for development including off-site improvements.
2. During the original cutting of previously undisturbed deposits, the Project Archaeologist and Native American monitor shall be onsite as determined necessary by the Project Archaeologist. Inspections will vary based on the

rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections will be determined by the Project Archaeologist in consultation with the Native American monitor. Monitoring of cutting of previously disturbed deposits will be determined by the Project Archaeologist.

3. In the event that previously unidentified potentially significant cultural resources are discovered, the Project Archaeologist shall have the authority to divert or temporarily halt ground disturbance operations in the area of discovery to allow evaluation of potentially significant cultural resources. The Project Archaeologist shall contact the County staff designated by the Director of Planning and Land Use at the time of discovery. The Project Archaeologist, in consultation with the designated County staff, shall determine the significance of the discovered resources. The designated County staff must concur with the evaluation before construction activities will be allowed to resume in the affected area. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the Project Archaeologist and approved by the designated County staff, then carried out using professional archaeological methods.
4. The Project Archaeologist (and Native American monitor, if contracted) shall monitor all areas identified for development.
5. If any human bones are discovered, the Project Archaeologist shall contact the County Coroner. In the event that the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted by the Project Archaeologist in order to determine proper treatment and disposition of the remains.
6. The Project Archaeologist shall submit monthly status reports to the Director of Planning and Land Use starting from the date of the notice to proceed to termination of implementation of the grading monitoring program. The reports shall briefly summarize all activities during the period and the status of progress on overall plan implementation. Upon completion of the implementation phase, a final report shall be submitted describing the plan compliance procedures and site conditions before and after construction. (Note: use this condition only if grading will take more than 1 month).
7. Prior to rough grading inspection sign-off for each phase, provide evidence that the field grading monitoring activities have been completed

to the satisfaction of the Director of Planning and Land Use. Evidence shall be in the form of a letter from the Project Archaeologist.

8. Prior to Final Grading Release for each phase, submit to the satisfaction of the Director of Planning and Land Use, a final report that documents the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program. The report shall include the following:]
 - (a) Department of Parks and Recreation Primary and Archaeological Site forms.
 - (b) Evidence that all cultural resources collected during the grading monitoring program has been curated at a San Diego facility that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within San Diego County, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.
 - (c) In the event that no cultural resources are discovered, a brief letter to that effect shall be sent to the Director of Planning and Land Use by the Project Archaeologist that the grading monitoring activities have been completed.
9. Specific Cultural Resource Conditions: [DPLU]
 - a. Prior to recordation of the final map, and prior to approval of any grading or improvement plans, or issuance of any grading permits, the subdivider shall implement the following relating to the grading monitoring program, to mitigate potential impacts to undiscovered buried archaeological resources on the Project site. The following implementation shall be to the satisfaction of the Director of Planning and Land Use:
 - (1). Provide evidence that a County approved archaeologist ("Project Archaeologist") has been contracted to implement a grading monitoring and potential data recovery program which complies with the County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements, to the satisfaction of the Director of Planning

and Land Use. Also, provide evidence that a Native American Monitor has been contracted to monitor grading, or evidence that no Native American Monitor was available, in which case the Project Archaeologist shall perform that function.

- (2). The Contract shall include a cost estimate of the required monitoring; this estimate shall be submitted to the Director of Public Works and included in the Bond Cost Estimate for the required Grading.

D. PALEONTOLOGICAL

1. This project site is has marginal to low levels of sensitive Paleontological resources. All grading activities are subject to the *County of San Diego Grading Ordinance Section 87.430*, if any significant resources (Fossils) are encountered during grading activities. The grading contractor is responsible to monitor for paleontological resources during all grading activities. If any fossils are found greater than 12 inches in any dimension, stop all grading activities and contact the County Permit Compliance Coordinator with the Department of Planning and Land Use before continuing grading operations.
2. If **any** paleontological resources are discovered and salvaged, the monitoring, recovery, and subsequent work determined necessary shall be completed by or under the supervision of a Qualified Paleontologist pursuant to the San Diego Guidelines for Determining Significance for Paleontological Resources.
3. Prior to Rough Grading Inspection (SEC. 87.421) do the following: If **no** paleontological resources were discovered, submit a "No Fossils Found" letter from the grading contractor to the director of Planning and Land Use stating that the monitoring has been completed and that no fossils were discovered, and including the names and signatures from the fossil monitors. The letter shall be in the format of Attachment E of the County of San Diego Guidelines for Determining Significance for Paleontological Resources.

E. GROUNDWATER/PUBLIC WATER

1. Before recording the Final Map, record an easement on off-site land that has been continuously used for agriculture or golf course purposes for at least the past five years and is being irrigated with at least 20 acre-feet of water annually from the Borrego Valley aquifer. The easement shall be granted to the County and shall permanently prohibit the use, extraction,

storage, distribution or diversion of water from the Borrego Valley aquifer on the land subject to the easement. The off-site land on which the easement will be placed, including the evidence of historic groundwater use, and the terms of the easement shall be subject to the approval of the Director of Planning and Land Use.

2. The subdivision is to be connected to a public water system, and the following conditions shall apply: (Standard Condition 23.1) [DPLU - Community Planning Division]

Water Providing Agency

- a. Obtain the commitment of the water providing agency to reserve facility capacity for all buildings/lots within the subdivision, and obtain the approval of said agency of the plans and specifications for the installation of such public water system.

Commitment from the applicable agency shall be in the form of any of the following:

- 1) A written statement, issued no more than three months prior to the date of the approval of the Final Map by the Board of Supervisors, certifying that a two-year commitment to reserve facility capacity for all lots within the subdivision has been given; or
- 2) In cases where the applicable agency has facilities under construction, a written statement issued no more than three months prior to the date of approval of the Final Map by the Board of Supervisors certifying that:
 - (a) The agency has facilities under construction;
 - (b) All permits required for the construction of said facilities have been obtained; and
 - (c) For a period of at least two years following completion of the facility improvement, said agency commits to reserve facility capacity for all lots within the subdivision; or

3. Specific Conditions

- a. The applicant shall comply with the Borrego Water District Groundwater Preservation Policy.
- b. Desert landscaping with limited water use may also be requirement of this development.

F. FIRE PROTECTION

1. The subdivider shall submit a letter from the applicable fire protection agency stating its satisfaction with the type and location of fire protection improvements and the minimum required water flow in gallons per minute, together with a letter from the applicable water service agency that the fire protection agency's minimum required water flow will be available to serve the site or verification shall be provided that such improvements are not needed. (Standard Condition 23.2) [DPLU - Community Planning Division]
2. Specific Conditions
 - a. Prior to recordation of the Final Map for the first unit, applicant shall enter into a cost-sharing agreement with other Borrego Springs developers, Borrego Springs Fire Protection District, and the County of San Diego to construct and provide for the ongoing maintenance and operation of a new fire station at the intersection of Smoke Tree Lane and Yaqui Pass Road.

III. Critical Project Design Elements That Must Become Conditions of Approval:

The following project design elements were either proposed in the project application or the result of compliance with specific environmental laws and regulations and were essential in reaching the conclusions within the attached Environmental Initial Study. While the following are not technically mitigation measures, their implementation must be assured to avoid potentially significant environmental effects.

1. Flooding/Drainage
 - a. Each building lot shall have a flood-free site for a residence. The building site shall be safe from the flood peak of a 100-year frequency storm. (Standard Condition 16) [DPW - Development Review Section]
 - b. Flood control maintenance onsite shall be by a private maintenance mechanism acceptable to the Department of Public Works. Provide for maintenance of the flowage area to

accommodate sheet flow from upstream property, to the satisfaction of the Department of Public Works.

- c. Any significant changes to the current project shall be submitted to the Department of Public Works for review and approval. Project grading and improvements must conform to flow-through design in conformance with the Borrego Valley Flood Management Report (Boyle Engineering, 1989), County's Flood Damage Prevention Ordinance, and/or approved master flood control plan.
- d. Letter(s) of permission shall be obtained from each property owner who is impacted by significant changes (including diversion and concentration) in downstream flow characteristics resulting from grading, private roads or other improvements, to the satisfaction of the Department of Public Works.
- e. Comply with all applicable stormwater regulations at all times. The activities proposed under this application are subject to enforcement under permits from the San Diego Regional Water Quality Control Board (RWQCB) and the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (Ordinance No. 9589) and all other applicable ordinances and standards. This includes requirements for Low Impact Development (LID), materials and wastes control, erosion control, and sediment control on the project site. Projects that involve areas greater than one (1) acre require that the property owner keep additional and updated information onsite concerning stormwater runoff. This requirement shall be to the satisfaction of the Department of Public Works.

2. Lighting

- a. The subdivider shall construct to the satisfaction of the Director of Public Works, a public street lighting system that complies with the following to the satisfaction of the director of public works: (Standard Condition 10) [DPW - Development Review Section]
 - (1) All fixtures shall use a high pressure sodium (HPS) vapor light source unless within 15 miles radius of Palomar or Mount Laguna observatories in which case fixtures shall use a low pressure sodium vapor light source.
 - (2) Deposit with the County of San Diego, through the Department of Public Works, a cash deposit sufficient to:

- (a) Energize, maintain and operate the street lighting system until tax revenues begin accruing from the subdivision for those purposes.
- (b) Pay the cost to process lighting district administration of this project. After recording of the Final Map, the subdivision shall be transferred without notice or hearing, to Zone A of the lighting district to operate and maintain the system.

ADOPTION STATEMENT: This Mitigated Negative Declaration was adopted and above California Environmental Quality Act findings made by the:

on _____

Richard Grunow, Planning Manager
Regulatory Planning Division

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